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October 1, 2003

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EX PARTE NOTICE

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Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: ALLTEL Communications Inc., Petitions for Designation as an Eligible
Telecommunications Carrier in the States of Virginia and Alabama
CC Docket No. 96-45, DA Nos. 03-1881, 03-1882

Dear Ms. Dortch:

On September 30, 2003, Glenn S. Rabin, Vice President, Federal Communications Counsel for ALLTEL Communications, Inc. ("ALLTEL"), Cheryl A. Tritt and the undersigned, also representing ALLTEL, met with William Maher, Chief of the Wireline Competition Bureau, Narda Jones, Legal Counsel to the Bureau Chief, and Paul Garnett of the Telecommunications Access Policy Division of the Wireline Competition Bureau, to discuss ALLTEL's petitions for designation as an eligible telecommunications carrier ("ETC") in Virginia, Alabama, North Carolina and Georgia.

The ALLTEL representatives discussed why ALLTEL's petitions should be granted and answered questions from the Commission staff concerning the petitions and the criteria that should be applied in ruling on ETC petitions. The views expressed by the ALLTEL representatives during the meeting tracked the positions set forth in ALLTEL's filings in these proceedings. The attached outline and recent order by the Michigan Public Service Commission granting ALLTEL ETC status in Michigan also were distributed to Commission staff.

MORRISON & FOERSTER LLP

Marlene H. Dortch
October 1, 2003
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In accordance with Section 1.1206 of the Commission's rules, this letter and attachments are being filed with your office for inclusion in the public record of the above referenced proceedings.

If you have any questions regarding this *ex parte* notice, please contact the undersigned.

Yours truly,

/s/ Frank W. Krogh

Frank W. Krogh
Counsel for ALLTEL Communications, Inc.

cc: William Maher
Carol Matthey
Narda Jones
Eric Einhorn
Paul Garnett
Shannon Lipp

ALLTEL PETITIONS FOR ETC STATUS

- 4 ALLTEL ETC petitions pending.
 - Comment cycle closed as to Alabama and Virginia applications since July 14.
 - North Carolina and Georgia applications completed with amendment to Georgia application filed on Sept. 15.
- ALLTEL's ETC petitions are fully consistent with FCC precedent and present no new policy or public interest issues that should otherwise delay expeditious approval. The opponents' stay requests as to Alabama and Virginia are procedurally defective and a delaying tactic that has been repeatedly rejected in previous ETC proceedings. Oppositions to those applications, which include untimely oppositions filed as Reply Comments, fail to rebut Section 214(e)(1) or public interest showings in petitions.
- ALLTEL's designation as an ETC will benefit the public interest through the introduction of competition, larger local calling areas, a variety of calling plans and health and safety benefits of wireless services in rural areas.
 - Recent Michigan PSC Order granting ALLTEL ETC status underscores that "designating ALLTEL as an ETC is in the public interest because it is likely to promote competition and provide benefits to customers in rural and high-cost areas by increasing customer choice, while promoting innovative services and new technologies, and encouraging affordable telecommunications services."
 - ILECs' public interest arguments distort the express purposes of the 1996 Act with regard to USF support. Such support is not to be the sole province of the ILECs, but rather is intended to provide an "evolving" level of service and facilitate both consumer choice and competition among carriers. As Mich. PSC pointed out, "[t]o the extent that the opposing parties are concerned about the effects on themselves of competition from wireless carriers, the Commission does not agree that the public interest requires that they be protected from competition."
 - The Alabama LECs trumpet the theme of harmful growth of the high-cost fund, but these very same LECs have vigorously advocated significant increases in the high cost funding received by ILECs. Wireless ETCs do not draw a significant portion of the high cost fund. ILECs are projected to receive 30 times the high-cost support projected for wireless ETCs in 2003.
 - Opponents' position undermines the competitive implications of wireless LNP. Once intermodal ports are possible, a wireless carrier will be positioned to actually capture the high cost line from an ILEC. Consequently, the wireless carrier should receive ETC status in order to draw the high cost support associated with the captured high cost line. Inasmuch as the ROR ILEC currently does not lose support when the line is captured, as noted in the *RTF Order*, the issue is simply whether the support will be available to the wireless carrier through ETC designation.

- The FCC cannot stay consideration of ALLTEL's ETC petitions while the Joint Board reviews issues of general future applicability outside the scope of the instant proceedings (*RCC, Cellular South*). A stay would violate the FCC's obligation to assure comparable treatment to similarly situated parties. Some wireless competitors of ALLTEL have already received ETC status in Alabama and are receiving high cost funds, thereby placing ALLTEL at a competitive disadvantage.
- A stay would abrogate FCC's informal commitment to resolve ETC petitions within six months and harm consumers by hindering the development of competition and availability of services in high-cost, rural areas.
- No basis to conclude now that ALLTEL would be denied ETC status under criteria ultimately established in the Joint Board's review. In any event, any changes adopted by the FCC/Joint Board will be applied to ALLTEL and all other ETCs at that time. Granting ETC status now is consistent with current rules and existing ETC certifications of other wireless ETCs.
- ALLTEL's request for ETC status in Alabama is consistent with precedent and makes all necessary showings under Section 214(e).
 - ALLTEL's commitment to provide and advertise the availability of all services supported by the universal service mechanism meets Section 214 criteria in a technologically neutral manner.
 - The public interest will benefit from ALLTEL's designation as an ETC through increased competition and in other ways mentioned above (*RCC, Cellular South*). Contrary to Alabama LECs' assertions, designating ALLTEL as an ETC will not harm consumers. The Bureau previously rejected the arguments of and population density data provided by the Alabama LECs (*RCC, Cellular South*).
 - The mobility of wireless telephones benefits consumers by providing novel alternatives and competition, rather than, as the Alabama LECs contend, undermining the USF. The FCC has granted previous ETC petitions for Alabama notwithstanding this argument (*RCC, Cellular South*).
 - Designating ALLTEL as an ETC will not result in rural cream skimming.
 - ALLTEL is not "picking and choosing" which areas to serve; it has committed to providing service throughout its licensed area. Furthermore, the affected ILECs can file disaggregation plans to target per-line support below the study area level. Accordingly, and consistent with FCC precedent, there is no incentive or opportunity for ALLTEL to intentionally cream skim. (*RCC, Cellular South*)
 - Facts also show that designating ALLTEL as an ETC will not result in inadvertent cream skimming. The majority of ALLTEL's service area is in high-cost areas; ALLTEL is not attempting to serve only the high-density, low-cost portions of the affected areas to the exclusion of high-cost areas. Moreover, for those ILEC service areas that ALLTEL will be only partially serving, Exh. A to ALLTEL's Reply

Comments shows that the portions ALLTEL will be serving are generally no more densely populated than the portions lying outside ALLTEL's proposed service area, and all but one of those ILECs have filed disaggregation and targeting plans, further limiting any opportunities to cream skim. (*RCC, Cellular South*)

- ALLTEL's request to redefine the study areas that it will be partially serving on a wire center by wire center basis will minimize the opportunity and incentive to cream skim. Redefining the study areas will not harm the affected ILECs and is consistent with FCC precedent. (*RCC, Cellular South*)
- CenturyTel and OPASTCO largely echo Alabama LECs' arguments.
 - What CenturyTel calls "bleeding" of *CALLS* IAS is, as Sprint explains, precisely what is supposed to happen as a result of competition under post-*CALLS* price cap regulation. *CALLS* provided same IAS for ETCs as for ILECs, irrespective of costs, as competitive incentive.
 - Claim that ALLTEL will receive "double" support as an ILEC and an ETC ignores that ALLTEL also contributes to USF support, and the same objection could be made against Verizon Wireless' ETC designation in Delaware or any other wireless ETC with a wireline affiliate in the same study area.
 - Criteria applied by Utah PSC in denying Western Wireless ETC status in rural areas that are currently served by ILECs not binding on FCC. PSC found public interest not served partly because Western Wireless already served area for which ETC designation sought.
- ALLTEL's request for ETC status in Virginia is consistent with precedent and makes all necessary showings under Section 214(e).
 - No party challenges any element of ALLTEL's Section 214(e)(1) showing. ETC status for carrier serving non-rural area is per se in the public interest where the carrier demonstrates it meets Section 214(e)(1) requirements (*Cellco, Corr*).
 - Untimely oppositions by Va. Rural LECs and OPASTCO to rural aspects of ALLTEL's Virginia petition present no specific challenge to any element of ALLTEL's Section 214(e)(1) showing and fail to rebut ALLTEL's public interest showing.
 - Va. Rural LECs' claim that ICLS is threatened ignores that *MAG Order* explicitly contemplated that ICLS would be available to ETCs to the same extent as other USF high-cost support.
 - Verizon's claim that the interstate access support (IAS) fund will be in jeopardy by granting ALLTEL's petition is untrue and self-serving. The *CALLS Order* explicitly contemplated that wireless ETCs serving price cap areas would be eligible for IAS. Furthermore, the FCC properly has never denied an ETC petition of a wireless carrier serving a price cap area for this reason. See, e.g., *Cellco*.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)	
ALLTEL COMMUNICATIONS, INC.,)	
for designation as an eligible telecommunications)	Case No. U-13765
carrier pursuant to Section 214(e)(2) of the)	
Communications Act of 1934.)	
_____)	

At the September 11, 2003 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chair
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On April 14, 2003, ALLTEL Communications, Inc., (ALLTEL) filed an application seeking designation as an eligible telecommunications carrier (ETC) under Sections 214(e)(2) and 214(e)(6) of the federal Communications Act of 1934, as amended, 47 USC 214(e)(2) and 214(e)(6) (federal Act) and Sections 201 and 203 of the Michigan Telecommunications Act, MCL 484.2101 et seq. (MTA). If granted, designation as an ETC would permit ALLTEL to receive universal service support in Michigan.

Several parties petitioned to participate in the proceeding. On May 6, 2003, the Commission Staff (Staff) filed a notice of appearance. On May 21, 2003, CenturyTel of Michigan, Inc.,

CenturyTel Midwest-Michigan, Inc., CenturyTel of Northern Michigan, Inc., and CenturyTel of Upper Michigan, Inc., (CenturyTel) jointly filed a petition to intervene. Also on May 21, 2003, Hiawatha Telephone Company, Chippewa County Telephone Company, Midway Telephone Company, and Ontonagon County Telephone Company (Hiawatha) jointly petitioned to intervene. The Michigan Exchange Carriers Association, Inc., (MECA), a voluntary association of 33 small incumbent local exchange carriers (ILECs) in Michigan, also filed a petition. On May 28, 2003, AT&T Communications of Michigan, Inc., and TCG Detroit (AT&T) filed a notice of intent to participate.

On May 28, 2003, a pre-hearing conference was conducted by Administrative Law Judge Mark E. Cummins (ALJ). ALLTEL, CenturyTel, MECA, AT&T, and the Staff attended. The ALJ granted the petitions to intervene and ordered the parties to file their direct testimony by June 10, 2003 and rebuttal testimony by June 23, 2003. Cross-examination of witnesses was to take place on July 7, 2003,¹ with a briefing schedule to be determined thereafter. In order to meet the 180-day Federal Communications Commission (FCC) guideline for state commissions to act on ETC applications, the Commission agreed to read the record in this proceeding.

Several parties filed testimony. ALLTEL filed the direct and rebuttal testimony of Lawrence J. Krajci, its Staff Manager of State Government Affairs. CenturyTel filed the direct and rebuttal testimony of Ted M. Hankins, its Director of State Government Relations. MECA filed the direct and rebuttal testimony of Robert W. Orent, President and CEO of Hiawatha Communications, Inc. The Staff filed the direct testimony of Daniel J. Kearney, Supervisor of the Operations Section of the Commission's Telecommunications Division.

¹ This date was later moved to July 8, 2003.

On July 8, 2003, the ALJ conducted an evidentiary hearing. All testimony was bound into the record by stipulation of the parties and cross-examination of witnesses was waived. ALLTEL, CenturyTel, MECA, and the Staff filed briefs and reply briefs on July 23 and August 1, 2003, respectively.

On July 25, 2003, ALLTEL filed a motion to strike portions of CenturyTel's reply brief. ALLTEL contends that CenturyTel inappropriately raised arguments for the first time in its reply brief, thereby preventing ALLTEL an opportunity to respond.

II.

POSITIONS OF THE PARTIES

There are two issues in this proceeding. First is whether ALLTEL should be designated as an ETC for purposes of receiving universal service support. Second, if ALLTEL is granted ETC status by the Commission, for what service area(s) should ALLTEL's status be granted.

ALLTEL

ALLTEL argues that it meets the requirements for ETC designation under the federal Act. ALLTEL states that it meets all the statutory and regulatory prerequisites for ETC designation and that designating ALLTEL as an ETC will serve the public interest. ALLTEL represents that once it receives its ETC designation, it plans to use the funding to speed the delivery of advanced wireless services to its customers. As an ETC, ALLTEL states that it will offer a basic universal service package to customers who are eligible for Lifeline and will provide service to any customer requesting service within its designated service area. ALLTEL further avers that it provides all the services supported by universal service mechanisms. ALLTEL says that it will

advertise the availability of the supported services and charges in a way that fully informs the general public throughout its designated service area.

ALLTEL argues that its application is in the public interest. ALLTEL asserts that granting it ETC status will help bring meaningful choice to Michigan customers who have few, if any, choices for local exchange service. ALLTEL further asserts that its ETC status will bring the benefits of competition to customers, increase choices, and lower rates. ALLTEL further notes that the FCC has determined that wireless providers may be designated as ETCs.² ALLTEL claims that its customers will benefit from having an expanded local calling area, making intrastate toll calls more affordable.

ALLTEL also requests that the Commission establish its service area for purposes of determining universal service support. ALLTEL specifically requests that it be granted ETC status for its entire licensed service area in Michigan. Attached to its application are exhibits that identify each of the requested areas by wire center. Where ALLTEL serves only a portion of a wire center, it requests ETC designation in that portion of the wire center where it provides service. For certain rural areas, ALLTEL requests that the Commission redefine the service area of several ILECs because ALLTEL only serves a portion of the ILECs' service areas.

CenturyTel

CenturyTel argues that ALLTEL's application must be denied. CenturyTel believes that ALLTEL's application does not meet the requirements for the granting of ETC status under

² See, ALLTEL application, p. 9, citing, *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCCR 8776, 8858-59, ¶¶ 145-47 (1997).

Section 214(e), because granting ETC status to ALLTEL would not be in the public interest.³

CenturyTel asserts that ALLTEL has been successful at providing service without the need for universal service support. It argues that giving ALLTEL universal service funds would give ALLTEL an unearned windfall, would work to increase charges for Michigan customers, and will ultimately jeopardize the universal service support mechanism altogether.

CenturyTel claims that ALLTEL should not be granted ETC status because, as a wireless carrier, ALLTEL's costs are unrelated to landline costs from which universal service support is derived. CenturyTel also asserts that it is held to higher service standards and regulatory obligations than wireless carriers, which result in higher operating costs for CenturyTel. CenturyTel specifically objects to the fact that ALLTEL has lower costs than CenturyTel, but would receive the same universal service support. CenturyTel argues that granting ALLTEL ETC status would create an uneven playing field, biased against higher cost providers, and could actually reduce competition.

CenturyTel also expressed concern over the fact that wireless carriers are not subject to the same regulatory oversight as incumbent carriers. CenturyTel contends that while wireless carriers are seeking support from a regulatory cost recovery mechanism, the Commission has no regulatory oversight over these carriers to ensure that the monies are used to advance universal service. CenturyTel contends that this uneven playing field, and the fact that the benefits of granting wireless carriers ETC status do not exceed the costs, means that granting ALLTEL's application would not be in the public interest.

³ In its reply brief, CenturyTel also asserts that ALLTEL's application is insufficient because ALLTEL does not provide "local usage" as required by federal law. CenturyTel's argument suggests that all wireless carriers in Michigan cannot meet the federal requirement because of the exclusion of mobile service from basic local exchange service. This Commission, however, has previously granted ETC status to several wireless carriers.

CenturyTel also believes that it would be premature for the Commission to grant any ETC applications while the FCC is in the process of considering new rules for the granting of ETC status to competitive carriers.⁴ CenturyTel suggests waiting until the FCC makes its pronouncements regarding any changes.

Furthermore, if the Commission decides to grant ALLTEL's application, then CenturyTel requests that ALLTEL's ETC status be conditioned on ALLTEL's compliance with regulatory safeguards to ensure a level competitive playing field with rural providers. CenturyTel also argues that allowing ALLTEL to have ETC status in only a portion of a rural ILEC's service area is contrary to the public interest, and that the Commission should not redefine CenturyTel's rural ILEC service area.

Hiawatha

Hiawatha believes that ALLTEL's application does not satisfy the requirements of granting ETC status and therefore should be denied. Hiawatha asserts that it provides rural telecommunications services and would be economically harmed if ALLTEL's application were granted. Hiawatha believes that universal service support is a scarce resource that is jeopardized by granting ETC status to providers like ALLTEL whose lower costs do not justify receiving the same level of support as rural carriers. Hiawatha also believes that granting ALLTEL ETC status would create an uneven competitive playing field for rural carriers. Hiawatha claims that wireless carriers given ETC status should be subject to the same service quality and reporting requirements as ILECs. Hiawatha also believes that ALLTEL should be required to serve the same areas as the ILECs and that the Commission should not redefine Hiawatha's service areas. Hiawatha also

⁴ See, Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, FCC 03J-1, CC Docket No. 96-45 (February 7, 2003).

contends that in order for ALLTEL's application to satisfy the public interest requirement, ALLTEL should have to demonstrate that the benefits of supporting multiple networks outweigh the cost of supporting multiple networks.

MECA

MECA also opposes ALLTEL's application for designation as an ETC. MECA asserts that it and its members, many of whom provide service to rural areas of the state, will suffer from a loss of universal service support. MECA asserts that a loss of universal service funds will affect small rural telecommunications providers' ability to maintain and invest in the infrastructure needed to serve high-cost areas.

MECA argues that ALLTEL's application cannot be granted unless granting the application is in the public interest. MECA asserts that merely providing all universal service supported services does not mean that an applicant's application is in the public interest. MECA alleges that the further public interest finding should be based upon universal service purposes and principles. MECA asserts that Congress, in placing this added requirement, did not believe that the public interest would always be served by encouraging competition in rural areas.

MECA claims that Congress did not intend universal service support to be a subsidy program. Rather, MECA argues, Congress intended universal service support to provide for cost recovery in order to promote infrastructure investment in high-cost rural areas where providing the same quality service at affordable rates comparable to urban areas is not suitable for carriers. MECA argues that without this support, high-cost investment would not have occurred in the past and will not occur in the future. MECA sees infrastructure investment as the primary goal of the universal service program.

MECA argues that the only providers of high quality, facilities-based services throughout their respective service areas are the rural ILECs. MECA claims that once a rural ILEC loses the ability or incentive to continue investing in its network, then rural areas may be deprived of affordable, high quality telecommunications services. MECA asserts that lack of sufficient funding will also affect the deployment of advanced services to consumers, such as schools, libraries, and health care facilities.

Consequently, the granting of ETC status to competitive carriers in areas served by rural carriers, MECA contends, must be properly managed to foster the goals of the federal Act. MECA claims that if the overall demand for funding grows to an unsustainable level, then support payments will be frozen or curtailed, resulting in serious operating issues for many rural telephone companies. MECA claims that this would result in reductions in service quality, higher rates, and perhaps even financial failure of rural companies that serve as the “lifeline” for many remote customers. MECA argues that the proliferation of “uneconomic competition” in rural areas could jeopardize rural telecommunications services altogether.

MECA also asserts that state commissions have placed far too great an emphasis on the benefits of competition when deciding ETC applications for rural service areas. MECA claims that subsidized competition does not serve the public interest. MECA believes that this over-emphasis has been to the detriment of ensuring that all consumers will retain and gain access to high quality, affordable telecommunications services, including advanced services, on a comparable basis to those available in urban areas. Because of this, MECA believes that the Commission must establish a set of principles to guide its decisions on ETC applications affecting rural areas.

To assist the Commission in establishing this set of principles, MECA offers its own. First, rural consumers should receive access to affordable, high quality telecommunications and information services, including advanced services that are reasonably comparable to those in urban areas and at reasonably comparable prices. Second, high-cost support should not be used as an incentive for uneconomic competition in areas served by rural carriers. Third, universal service funds are a scarce national resource that telephone companies must carefully manage to serve the public interest. Fourth, rural universal service support reflects the difference between the cost of serving high-cost rural areas and the rate levels mandated by policymakers. Fifth, the public interest is served only when the benefits from supporting multiple carriers exceed the costs of supporting multiple networks. Sixth, in areas where costs of supporting multiple networks exceed the public benefits from supporting multiple carriers, the public interest dictates providing support to a single carrier that provides critical telecommunications infrastructure. Seventh, the cost of market failure in high-cost rural Michigan could be severe.

In addition to the guiding set of public interest principles, MECA believes the Commission should create a standard set of minimum qualifications, requirements, and policies to be applied when considering ETC applications for rural service areas. MECA believes that using such a template would help the Commission determine whether the public interest would be served by granting an application. MECA also asserts that such a guideline would improve the long-term viability of the universal service fund because it believes only the most qualified carriers that are capable of, and committed to, being “true providers” of universal service should receive the ETC designation.

To assist the Commission, MECA offers the following qualifications and requirements that it believes the Commission should adopt when considering ETC applications: 1) A carrier must

demonstrate its ability and willingness to provide all supported services throughout the service area. 2) To fulfill the advertising requirement, an ETC must emphasize its universal service obligation to offer service to all consumers in the service area. 3) A carrier must have formal arrangements in place to provide service where facilities have yet to be built. 4) A carrier must have a plan for building out its network once it receives ETC status and must make demonstrative progress toward achieving its plan to retain its status. 5) A carrier must demonstrate that it is financially stable.

In addition to public interest principles, and minimum qualifications and requirements, MECA urges adoption of the following policies that it believes the Commission should adhere to when reviewing ETC applications involving rural areas: 1) ETC designations in rural areas should be made at the study area level (an ILEC's entire service territory within one state). 2) The Commission should ensure that competitive ETCs will be capable of providing high-quality service to all customers in the service area should the rural ILEC find it necessary to relinquish its own ETC designation. 3) Any service quality standards, reporting requirements, and customer billing requirements established by the Commission should apply equally to all ETCs in the state. 4) The Commission should retain the authority to decertify any ETC that is not meeting any of the Commission's qualifications and requirements.

In short, MECA does not believe that granting ALLTEL's application would be in the public interest. MECA also supports deferring the decision on ALLTEL's application until the Federal-State Joint Board clarifies the process for designating ETCs.

Staff

The Staff's testimony references background material that it believes will assist the Commission in determining whether granting ALLTEL's application would be in the public

interest. In so doing, the Staff directs attention to portions of the MTA and the federal Act that support the development and the use of competition to make available quality telecommunications services at prices that are just, reasonable, and affordable even in rural, high-cost areas. The Staff also presents a number of questions for the Commission's reflection. The Staff would like more guidance as to the definition of "public interest." The Staff suggests that healthy competition is the most significant factor in a public interest analysis, followed closely by choice and reasonable rates. In the end, the Staff sees no reason to further delay or deny ALLTEL's ETC designation.

III.

DISCUSSION

ETC Designation

Pursuant to 47 USC 214(e)(2), the Commission may designate more than one carrier in a rural area as an ETC if the Commission finds doing so consistent with the public interest, convenience, and necessity. The parties to this proceeding opposing ALLTEL's application argue that granting ALLTEL's application is not in the public interest. The Commission disagrees. On numerous occasions, the Commission has found that competition can be advantageous to the citizens of this state. In this case, designating ALLTEL as an ETC is in the public interest because it is likely to promote competition and provide benefits to customers in rural and high-cost areas by increasing customer choice, while promoting innovative services and new technologies, and encouraging affordable telecommunications services. Further, ALLTEL provides service where there are few, if any, competitive local exchange carriers.

The Commission disagrees with the significance of the numerous arguments advanced by the opposing parties. To the extent that the opposing parties claim that wireless service is inferior to landline service, the Commission responds that customers should not be denied an opportunity to

determine which of these services best meets their needs. In response to the argument that wireless service providers are not subject to the same regulations designed to protect customers, the Commission finds sufficient protection for customers in their right to choose not to use wireless service and to choose from whom to take service. To the extent that the opposing parties are concerned about the effects on themselves of competition from wireless carriers, the Commission does not agree that the public interest requires that they be protected from competition. Moreover, concerns over the effects of competition on the universal service mechanism are better addressed by the FCC, which is responsible for disbursing the federal universal service funds.

There is ample precedent in support of a wireless carrier's designation of ETC status. On at least three prior occasions, this Commission has granted ETC status to wireless carriers.⁵ In addition, numerous ETC proceedings involving competitive carriers, including wireless carriers, have taken place at the FCC and before other state commissions with the competitive carrier ultimately being granted ETC status.⁶ The Commission provided parties an opportunity to voice their concern about the granting of ETC status to a wireless carrier by conducting an evidentiary hearing. Virtually every argument raised by the parties in opposition to ALLTEL's application, however, has been addressed previously. No new information was brought to the Commission's

⁵ See, the August 26, 2003 order in Case No. U-13714, the November 20, 2001 order in Case No. U-13145, and the December 6, 2002 order in Case No. U-13618.

⁶ See, e.g., *RCC Minnesota, Inc. et. al. Request for Designation as Eligible Telecommunications Carrier*, Order, Maine Public Utilities Commission Docket No. 2002-344 (May 13, 2003); *In the Matter of Federal State Joint Board on Universal Service Cellular South License Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, Memorandum Opinion and Order, CC Docket No. 96-45, DA 02-3317 (rel. Dec. 4, 2002); *In the Matter of Federal State Joint Board on Universal Service RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunication Carrier Throughout its Licensed Service Area in the State of Alabama*, Memorandum Opinion and Order, CC Docket No. 96-45, DA 02-3181 (rel. Nov. 2, 2002).

attention that would persuade the Commission that designating a competitive carrier as an ETC in an area served by a rural ILEC would be contrary to the public interest.

Furthermore, the Legislature has decided that the Commission should not regulate wireless service. For that reason, the Commission must also decline to adopt the conditions proposed, such as requiring ALLTEL to assume carrier of last resort responsibilities, which would require that the Commission regulate wireless service. Consistent with prior designations, however, the Commission reserves the right to conduct audits as needed to determine that the funds are used for permitted purposes.

The Commission declines CenturyTel's and MECA's recommendation to defer its determination on ALLTEL's application until after the Federal-State Joint Board provides further clarity on ETC designations. At this point, there is no time frame in which the Joint Board will act. The Commission, however, has been urged by the FCC to act upon ETC applications within 180 days and the end of that period with respect to this application is fast approaching. The Commission believes the better course of action is to act upon ALLTEL's application within the desired timeframe and take recommendations of the Federal-State Joint Board into account when deciding future cases.

Service Area

ALLTEL also requests that the Commission establish a "service area" for purposes of determining universal service support. The federal Act defines the term "service area" to be a "geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms." 47 USC 214(e)(5). As stated above, ALLTEL requests that its licensed service area be the designated service area for universal service support.

Additionally, ALLTEL requests that the Commission redefine the service areas of rural ILECs where it cannot provide service to the entire service area of these companies.

CenturyTel, Hiawatha, and MECA oppose ALLTEL's service area proposal. They argue that ALLTEL must serve the same service area as the rural ILEC. CenturyTel contends that redefining a rural carrier's service area acts as a disincentive for an additional ETC to serve the most rural parts of a relevant study area. CenturyTel contends that the goal of universal service would be better served by requiring "ETCs to expand their horizons." CenturyTel Brief, p. 17. CenturyTel is also concerned that if additional ETCs are not required to serve a rural ILEC's entire study area, then there is a greater risk of "cream-skimming," where the additional ETC can choose to provide service to lower cost customers without being subject to providing service to attendant higher cost customers while receiving the same level of universal service support as the rural ILEC. MECA also raises concerns about what it described as significant administrative burdens for an ILEC as a result of study area changes. MECA describes how an ILEC's accounting and auditing procedures are built around their existing study areas.

The Commission appreciates the concerns raised by CenturyTel, Hiawatha, and MECA, but declines to accept the proposal that the wireless carrier's service area should encompass the ILEC's entire study area. In granting ETC status to RFB Cellular, Thumb Cellular, and NPI-Omnipoint Wireless, LLC, the Commission did not require the wireless carrier to provide service to the entire study area of the rural ILEC.

The Commission, however, also has concerns with ALLTEL's proposal to redefine the service areas of certain ILECs. The study areas of rural ILECs have existed for many years and many accounting and other administrative tasks are based upon those study areas.

The Commission is also sensitive to the “cream-skimming” issues that could exist if every ETC applicant is able to carefully craft its own desired service area. Consequently, the Commission has decided to delineate service areas for purposes of universal service support by exchanges. In so doing, the Commission finds that the “cream-skimming” concerns are alleviated because ALLTEL has not specifically picked the areas in which it will serve, but instead the areas were defined in the FCC’s wireless licensing process. Additionally, exchanges tend to encompass many types of customers, including rural and high-cost customers. The Commission is persuaded that ALLTEL is not targeting any specific area or that serving any of the partial study areas would result in a windfall due to service to a highly-populated area. Much of the area covered by ALLTEL’s wireless carrier license is in very rural parts of Michigan. The Commission is also convinced that designating service areas utilizing entire exchanges will minimize the administrative burden on rural telephone companies to calculate costs at something other than a study area level. This approach will require affected ILECs to disaggregate into service areas that are coterminous with existing telecommunications boundaries for which costs are already calculated.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission’s Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.
- b. ALLTEL should be designated as an ETC for the purpose of receiving federal universal service funds.
- c. ALLTEL’s designation as an ETC is in the public interest.

d. ALLTEL's service area for purposes of determining universal service obligations and support mechanisms should be coterminous with established exchanges.

e. ALLTEL should be directed to file in this docket (and serve upon the other parties) a listing of the exchanges where it currently provides service or intends to provide service under its license and for which it wishes to receive universal service support and is able to meet universal service obligations.

f. The granting of ALLTEL's ETC status should be conditioned upon the Commission's reservation of its right to audit all expenditures of these universal service funds.

g. ALLTEL's ETC designation should be subject to the annual Commission re-certification process. ALLTEL should be directed to contact the Staff regarding the 2004 re-certification process prior to September 17, 2003.

h. ALLTEL's August 25, 2003 motion to strike should be denied.

THEREFORE, IT IS ORDERED that:

A. ALLTEL Communications, Inc., is designated an eligible telecommunications carrier for the purpose of receiving federal universal service funds.

B. ALLTEL Communications, Inc.'s, service area for purposes of determining universal service obligations and support mechanisms is to be coterminous with established exchanges.

C. ALLTEL Communications, Inc., is directed to file in this docket (and serve upon the other parties) a listing of the exchanges where it currently provides service or intends to provide service under its license and for which it wishes to receive universal service support and is able to meet universal service obligations.

D. ALLTEL Communications, Inc.'s, eligible telecommunications carrier designation is conditioned upon the Commission's reservation of its right to audit all expenditures of these universal service funds.

E. ALLTEL Communications, Inc.'s eligible telecommunications carrier designation is subject to the annual Commission re-certification process. ALLTEL is directed to contact the Commission Staff regarding the 2004 re-certification process prior to September 17, 2003.

F. ALLTEL Communications, Inc.'s August 25, 2003 motion to strike is denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark

Chair

(S E A L)

/s/ Robert B. Nelson

Commissioner

/s/ Laura Chappelle

Commissioner

By its action of September 11, 2003.

/s/ Robert W. Kehres

Its Acting Executive Secretary

D. ALLTEL Communications, Inc.'s, eligible telecommunications carrier designation is conditioned upon the Commission's reservation of its right to audit all expenditures of these universal service funds.

E. ALLTEL Communications, Inc.'s eligible telecommunications carrier designation is subject to the annual Commission re-certification process. ALLTEL is directed to contact the Commission Staff regarding the 2004 re-certification process prior to September 17, 2003.

F. ALLTEL Communications, Inc.'s August 25, 2003 motion to strike is denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

Chair

Commissioner

Commissioner

By its action of September 11, 2003.

Its Acting Executive Secretary

In the matter of the application of)
ALLTEL COMMUNICATIONS, INC.,)
for designation as an eligible telecommunications)
carrier pursuant to Section 214(e)(2) of the)
Communications Act of 1934.)
_____)

Case No. U-13765

Suggested Minute:

“Adopt and issue order dated September 11, 2003 approving the application of ALLTEL Communications, Inc., for designation as an eligible telecommunications carrier for purposes of receiving universal service support, as set forth in the order.”